

ESTTA Tracking number: **ESTTA455975**

Filing date: **02/11/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Green Flash Brewing Co.		
Entity	Corporation	Citizenship	California
Address	6550 Mira Mesa Blvd. San Diego, CA 92121 UNITED STATES		

Attorney information	Candace L. Moon Michaux-Moon Legal Services 8450 Sleepy Way El Cajon, CA 92021 UNITED STATES candace@craftbeerattorney.com Phone:619-749-4115
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Applicant Information

Application No	85159802	Publication date	01/31/2012
Opposition Filing Date	02/11/2012	Opposition Period Ends	03/01/2012
International Registration No.	NONE	International Registration Date	NONE
Applicant	MKS Global, LLC 5105 WEBER LANE SKOKIE, IL 60077 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Energy drinks
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85360348	Application Date	06/30/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GREEN FLASH		

Design Mark	<h1>Green Flash</h1>
Description of Mark	NONE
Goods/Services	Class 020. First use: First Use: 2005/06/10 First Use In Commerce: 2005/06/10 Non-metal taps for beer kegs Class 032. First use: First Use: 2005/06/10 First Use In Commerce: 2005/06/10 Beer

Attachments	85360348#TMSN.jpeg (1 page)(bytes) GF Notice of Opp.pdf (6 pages)(2588407 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/clm/
Name	Candace L. Moon
Date	02/11/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of:

Trademark Application Serial No. 85/159,802

For the mark Flash Energy Drink in International Class 32

Published in the Official Gazette on January 31, 2012

Green Flash Brewing Company, Inc.

Opposer,

v.

MKS Global, LLC

Applicant.

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Opposition No. _____

NOTICE OF OPPOSITION

Green Flash Brewing Company (hereinafter “Opposer”) believes that it will be damaged by registration of the mark shown in MKS Global’s (hereinafter “Applicant”) application having Serial No. 85/159,802 in the International Class 32 for “Energy Drinks” and hereby opposes the same. Green Flash Brewing Company’s own trademark application, Serial No. 85/360,348 is currently suspended pending the outcome of MKS Global’s trademark application, as well as application Serial No. 85/245,740.

As grounds for this opposition, Opposer hereby states as follows:

1. Opposer is a corporation organized and existing under the laws of the State of California, with its headquarters located 6550 Mira Mesa Blvd., San Diego, CA 92121. Opposer operates in the beverage industry as a manufacturer and has been brewing beer since November, 2002.
2. Upon information and belief, Applicant is an Illinois LLC with its principal place of business located at 5105 Weber Lane, Skokie, IL 60077. Applicant seeks to register the word mark Flash Energy Drink on an intent-to-use basis as a trademark for International Class 32 “Energy Drinks” as evidenced in its application filed October 24, 2010 and published for opposition on January 31, 2012.
3. Opposer has used the mark Green Flash in interstate commerce in the United States in connection with beer and brewery services since November, 2002.
4. Opposer’s prior use of the mark in connection with International Class 32 constitutes *prima facie* evidence of Opposer’s ownership of the Green Flash mark, and exclusive right to use the Green Flash mark in commerce and in connection with the goods and services specified in the registrations, including, but not limited to those in International Class 32 specified in Applicant’s Registration Serial No. 85/159,802.

5. Opposer has developed extremely valuable goodwill in the Green Flash mark by virtue of its longevity of usage in commerce, expenditure of substantial sums in promotional activities, and the impeccable quality and excellence of its products and services. With its extensive use by Opposer of its Green Flash mark, consumers familiar with the beer, as well as the brewery, have come to know and recognize the Green Flash mark in connection with Opposer's products and services.

6. Based on Opposer's prior use of the mark Green Flash since at least as early as November, 2002, in International Class 32, and Applicant's intent-to-use filing basis, there is no issue as to priority and Opposer's rights in and to the Green Flash mark are superior to that of Applicant.

7. Applicant's mark, Flash Energy Drink, is virtually identical to Opposer's Green Flash mark. When the mark Flash Energy Drink is applied to goods and/or services traveling in the same channels of trade as those sold by Opposer, it so resembles Opposer's mark Green Flash that it is likely to be confused therewith and mistaken therefore, and will lead to deception or mistakes as to the origin of Applicant's goods and/or services bearing the Green Flash mark. Consumers familiar with Opposer's Green Flash mark and its reputation in the beverage industry would be likely to buy Applicant's Flash Energy Drink products and/or services as and for a product and/or service created and sold by the Opposer.

8. Opposer will be damaged by registration of the Flash Energy Drink mark by Applicant because such registration would grant to Applicant *prima facie* evidence of the exclusive right to

use the mark in conjunction with Applicant's products and/or services and such use would be likely to cause confusion or mistake or to deceive as to the affiliation, connection or association of Applicant with Opposer (where none exists), and as to the origin, sponsorship, and approval of Applicant's products and/or services and other commercial activities by Opposer (where none exists).

9. Such confusion would cause further irreparable harm to Opposer in that any defects or fault found with Applicants' goods and/or services or other commercial activities could erroneously be attributed to Opposer, thereby harming Opposer's reputation and damaging its substantial goodwill in the Green Flash mark.

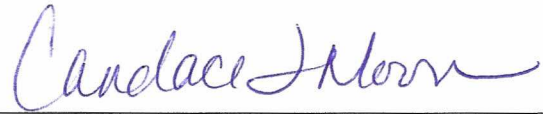
10. Opposer will be damaged by registration of the Flash Energy Drink mark by Applicant because such registration would grant to Applicant *prima facie* evidence of the exclusive right to use the Flash mark in conjunction with Applicant's goods and/or services and such use would cause irreparable harm to the Opposer.

WHEREFORE, Opposer Green Flash Brewing Company respectfully requests that the Board deny registration of Applicant MKS Global's Flash Energy Drink mark and award Opposer all other relief to which it is entitled.

This Notice of Opposition is being filed electronically with the United States Patent and Trademark Office Trademark Trial and Appeal Board.

Dated: February 11, 2012

Respectfully Submitted,



Candace L. Moon, Esq.
California Bar No. 260141

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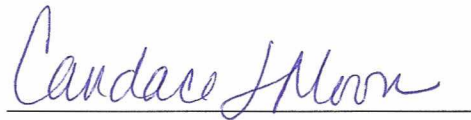
Candace@craftbeerattorney.com

Attorney for Opposer, Green Flash Brewing
Company, Inc.

Certificate of Service

I HEREBY CERTIFY that a true and complete copy of the foregoing Notice of Opposition was served on 2/13/12, via first-class mail, postage pre-paid, on:

MKS Global, LLC
5105 Weber Lane
Skokie, IL 60077



Candace L. Moon, Esq.